

STAFF REPORT



ITEM NO. 12

CITY OF OCEANSIDE

DATE: August 16, 2006

TO: Honorable Mayor and City Council Members

FROM: Public Works Department

SUBJECT: **APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT WITH UNITED STORM WATER INC., FOR THE CITYWIDE STORM DRAIN INSPECTION AND CLEANING PROGRAM**

SYNOPSIS

Staff recommends that the City Council approve a Professional Service Agreement with United Storm Water, Inc., of the City of Industry in the amount of \$200,000 to conduct the annual Citywide drain inspection and cleaning program, and authorize the City Manager to execute the agreement.

BACKGROUND

The National Pollutant Discharge Elimination System and the Regional Water Quality Control Board require the City to inspect and clean the City's storm drain inlets and catch basins each year. The annual Citywide drain and inspection program inspects and cleans all trash and debris from catch basins, curb inlets and curb outlet structures within the City limits. Inspections consist of a visual assessment of the type and quantity of trash and debris removed from each facility, the condition of the basin and adjoining facilities, and noting of any structural/maintenance deficiencies such as holes, cracks, exposed reinforcing bars and missing protection bars or grating. Cleaning consists of removing trash and debris from the storm water facility by air vacuum excavation.

ANALYSIS

The drain cleaning and inspection program requires nonprofessional specialized knowledge and equipment which is not readily available. Two companies responded to our request for qualifications, AIRX and United Storm Water. Competitive negotiations with both companies allowed in-depth analysis of their qualifications, capabilities and cost. United Storm Water was the most qualified, capable and cost-effective of the two.

United Storm Water provided the drain cleaning and inspection services to the City last year and cleaned 3,150 catch basins and curb inlets of more than 101 tons of trash and pollutants that would otherwise wash into the City's streams and beaches at a cost of \$191,200. The proposed agreement will increase the cost of services by 4.5 percent to \$200,000.

The agreement will allow the City to meet its regulatory requirements while providing staff sufficient time to determine if City forces and equipment can provide a more cost effective program to meet this mandated service. If it is determined that the continued contracting for this program is the most cost-effective and beneficial to the City, staff will conduct a public bid process in the spring after exploring all options to increase the pool of potential bidders for this type of specialized work.

FISCAL IMPACT

The cost of the agreement is \$200,000. Sufficient funds are available in the Street Maintenance Fund No. 213.416021 of the City's operating budget.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

The referenced document has been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends that the City Council approve a Professional Service Agreement with United Storm Water, Inc., of the City of Industry in the amount of \$200,000 to conduct the annual Citywide drain inspection and cleaning program, and authorize the City Manager to execute the agreement.

PREPARED BY:



Gary P. Gurley
Senior Property Agent

SUBMITTED BY:



Barry E. Martin
Interim City Manager

REVIEWED BY:

Michelle Skaggs-Lawrence, Assistant to the City Manager



Peter Weiss, Public Works Director



Kiel Koger, Maintenance and Operations Manager



CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

PROJECT: CITYWIDE DRAIN INSPECTION AND CLEANING PROGRAM

THIS AGREEMENT is made and entered into this 25th day of July, 2006 by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and **United Storm Water, Inc.**, hereinafter designated as "CONTRACTOR."

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The CONTRACTOR shall furnish all labor, equipment, materials, tools, services and special skills required to perform the scope of work as set forth in Exhibit "A" attached hereto and by this reference made part of this Agreement.
2. **INDEPENDENT CONTRACTOR.** CONTRACTOR's relationship to the CITY shall be that of an independent contractor. CONTRACTOR shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless specifically authorized in writing by the Director, Public Works. The CONTRACTOR shall not be authorized to communicate directly with, nor in any way direct the actions of, any bidder or the construction contractor for this project without the prior written authorization by the Director, Public Works. CONTRACTOR shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. CONTRACTOR shall report to the CITY any and all employees, agents, and consultants performing work in connection with this project, and all shall be subject to the approval of the CITY.
3. **INSURANCE.**
 - 3.1 **Liability Insurance.**
 - 3.1.1 CONTRACTOR shall, throughout the duration of this Agreement maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONTRACTOR, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

CITYWIDE DRAIN INSPECTION AND CLEANING PROGRAM

CONTRACTOR'S indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the CITY, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not.

CONTRACTOR's indemnification of CITY shall not be limited by any prior or subsequent declaration by the CONTRACTOR.

6. AGREEMENT BONDS. Prior to the commencement of any work under this AGREEMENT, the CONTRACTOR shall provide two good and sufficient bonds in the amounts listed below:

6.1 Performance Bond for 100 percent of the AGREEMENT award to guarantee faithful and timely performance of all work, in a manner satisfactory to the CITY, and further guarantee that all materials and workmanship will be free from original or developed defects.

6.2 Payment Bond. Material and labor bond for 100 percent of the agreement award to satisfy claims of material suppliers, mechanics, and laborers employed by CONTRACTOR on the work that is the subject of the agreement.

7. TERM.

7.1 Commencement. The term of this Agreement shall be for a period of (8) weeks commencing on City Council approval plus (10) days.

7.2 Renewal Options. There are no renewal options for this Agreement.

8. COMPENSATION.

8.1 CONTRACTOR's compensation for all work performed in accordance with this Agreement, shall not to exceed \$200,000.

8.2 CONTRACTOR shall provide CITY an invoice once all work has been completed and accepted by the CITY. CITY will make payment within fifteen (15) days of the receipt of invoice.

CITYWIDE DRAIN INSPECTION AND CLEANING PROGRAM

9. SPECIAL PROVISIONS.

9.1 Termination Of Agreement. The CITY may terminate the AGREEMENT as described elsewhere in the AGREEMENT or upon written notice by the CITY when conditions encountered during the Work make it impossible or impracticable to proceed, or when the CITY is prevented from proceeding with the AGREEMENT by act of God, national emergency, proclamation of the President of the United States, order of any federal authority, by law, or by official action of a public authority.

In the event of such a termination, the CONTRACTOR shall be entitled to compensation only for the reasonable value of the work done.

9.2 DEFINITIONS. The use of the words "shall" and "may" shall be understood to mean mandatory and permissive respectively. Where "as directed," "as required," "as permitted," "approved," "acceptance," or words of similar import are used, it shall be understood that the direction, requirement, permission, approval or acceptance by the Project Manager is intended unless otherwise stated. As used herein, "provided" shall be understood to mean "provide complete in place". The use of "Project Manager" shall be construed to mean the Division Manager or his/her designated representative(s) and any such designation shall be in writing. The use of the word "CONTRACTOR" shall be held to mean the CONTRACTOR and or any person employed by the CONTRACTOR and working under this Agreement.

9.3 Local Office. Not required.

9.4 Licenses and Permits. The CONTRACTOR shall possess all licenses and permits required for the performance of the work required by this Agreement.

9.5 Compliance with the Law. The CONTRACTOR agrees that performance under the Agreement shall comply with applicable laws of the United States of America, the State of California, and the County of San Diego and that CONTRACTOR also comply with all applicable policies and regulations of the CITY OF OCEANSIDE.

9.6 Subcontractors. Subcontractors shall not be allowed under the terms and conditions of the Agreement. All persons engaged in the work will be considered as employees of the CONTRACTOR and the CONTRACTOR shall be held directly responsible for their work and their compensation.

9.7 Equal Employment Opportunity. The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age or disability. The CONTRACTOR shall ensure that all employees and

CITYWIDE DRAIN INSPECTION AND CLEANING PROGRAM

applicants for employment shall be treated with equality in all aspects of employment processes including, but not limited to, hiring, transfer, promotion, training, compensation and termination, regardless of their race, creed, color, sex, national origin, age or disability.

9.8 Personnel. The CONTRACTOR shall furnish sufficient supervisory and working personnel capable of promptly accomplishing, to the satisfaction of the Project Manager and on schedule, all work required under this Agreement during the regular and prescribed hours. All such personnel shall be physically able to do their assigned work. The CONTRACTOR and CONTRACTOR's employees shall conduct themselves in a proper and efficient manner at all times and shall cause the least possible annoyance to the public. Employees shall be fully clothed in suitable uniform attire with a company identifying marker (personnel identification on the back will be considered suitably attired). The Project Manager may require the CONTRACTOR to remove from the work site any employee(s) deemed careless, incompetent, or otherwise objectionable whose continued employment on the job is considered to be contrary to the best interests of the CITY OF OCEANSIDE.

The CONTRACTOR shall have on the job at all times that work is being performed competent supervisors, (who may be working supervisors), who have the ability to speak and understand English, and are able to discuss matters pertaining to this Agreement with the general public and the Project Manager. Supervisors must have a minimum of three (3) years actual field experience, and must be able to demonstrate to the satisfaction of the Project Manager that they possess adequate technical background. Adequate and competent supervision shall be provided for all work done by the CONTRACTOR'S employees to ensure accomplishment of high quality work, which will be acceptable to the Project Manager. In addition, non- working supervisors shall inspect all areas under the Agreement a minimum of two times each week.

9.9 Safety Requirements. All work under Agreement shall be performed in such manner as to provide maximum safety to the public and, where applicable, to comply with all safety standards required by CAL-OSHA. The Project Manager reserves the right to issue restraint or cease and desist orders to the CONTRACTOR when unsafe or harmful acts are observed or reported relative to the performance of the work under this Agreement.

9.10 Hazardous Conditions. The CONTRACTOR shall maintain all work sites free of hazards to persons and/or property resulting from CONTRACTOR's operations.

9.11 FAILURE TO PERFORM SATISFACTORILY. It is agreed and understood that if the CONTRACTOR fails to perform the work as specified herein, the Project Manager may:

CITYWIDE DRAIN INSPECTION AND CLEANING PROGRAM

1. Pay only for the amount of service received, as determined by the Project Manager, with an appropriate downward adjustment in Agreement price; or
2. Have such required work done by CITY Forces, by others or by both, and charge the cost thereof to the CONTRACTOR.

9.12 PAYMENTS WITHHELD. The CITY may withhold payment to such extent as may be necessary to protect the CITY from loss due to:

1. Work required in the specifications, which is defective, incomplete or not performed. Such adjustments may be estimated cost for performance by CITY Forces, plus CITY overhead, and shall include overtime pay as required to complete the work.
2. Claims filed against the CITY for damage caused by the CONTRACTOR's acts or omissions, or reasonable evidence indicating probable filing of such claims.
3. Failure of the CONTRACTOR to make payments properly for materials or labor.
4. A reasonable doubt that the Agreement can be completed for the balance then unpaid.

9.13 MINOR MODIFICATIONS. The Project Manager may modify these specifications with the joint written approval of the CONTRACTOR and the CITY OF OCEANSIDE.

9.14 INSPECTION. The Project Manager shall regularly inspect the project site locations for compliance with these specifications. Discrepancies or deficiencies in the work shall be corrected immediately, in no event in greater than three (3) days, by the CONTRACTOR at no additional cost to the City.

10. ENTIRE AGREEMENT. This Agreement comprises the entire integrated understanding between CITY and CONTRACTOR concerning the work to be performed for this project and supersedes all prior negotiations, representations, or agreements.

11. INTERPRETATION OF THE AGREEMENT. The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The CONTRACTOR shall be responsible for complying with all Local, State, and Federal laws whether or not said laws are expressly stated or referred to herein.

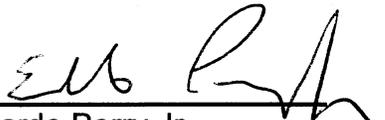
**CITYWIDE DRAIN INSPECTION
AND CLEANING PROGRAM**

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

12. AGREEMENT MODIFICATION. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.

13. SIGNATURES. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONTRACTOR and the CITY.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Services Agreement to be executed by setting hereunto their signatures this 25th day of July, 2006.



Eduardo Perry Jr.
President



Robert Pina
Secretary

Barry E. Martin
City Manager

Approved as to form:



ASST.
City Attorney

NOTARY ACKNOWLEDGMENTS OF CONTRACTOR MUST BE ATTACHED.

CALIFORNIA ALL – PURPOSE ACKNOWLEDGEMENT

State of California

County of Los Angeles

On July 25, 2006 before me, Lillian Valdivieso/Notary Public

Personally appeared Eduardo C. Perry, Jr.
NAME OF SIGNER(S)

Personally known to me - or - Proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the persons(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Lillian Valdivieso
(SIGNATURE OF NOTARY)

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL/OWNER
President
TITLE(S)
- PARTNER(S) LIMITED
 GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

PROFESSIONAL SERVICE AGREEMENT
TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

7/25/06
DATE OF DOCUMENT

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY (IES)

UNITED STORM WATER, INC.

CITYWIDE DRAIN INSPECTION AND CLEANING PROGRAM

EXHIBIT A SCOPE OF WORK

The CONTRACTOR shall furnish all labor, equipment, materials, tools, services and special skills required to perform the pressure washing as set forth in this specification and in keeping with the highest standards of quality and performance.

GENERAL. All construction shall conform to Parts 2 and 3 of the 2000 edition of the Standard Specifications for Public Works Construction except as specifically amended by these Agreement Documents.

1. **INSPECTIONS**

- a. The CONTRACTOR'S project superintendent and other necessary personnel shall be available for regularly scheduled and non-scheduled inspections with property owners, property managers and committees and/or the Landscape Inspector.
- b. Each area shall be inspected following scheduled work. If any delinquent items are found, the CONTRACTOR shall have 5 workdays to complete any punch list items. If the contractor fails to complete any punch list items, another contractor will be hired to complete the work. This cost, plus additional inspection and administrative fees shall be deducted from the CONTRACTOR'S monthly billing.

2. **EXTRA WORK**

- a. There may be projects over and above the scope of this contract. There is no implied guarantee that the prime contractor will do any of this extra work. Much is contingent upon the overall quality and cooperation of the prime contractor in regards to regular contract work. Depending on the extent of the project, the City may solicit proposals from several contractors. When performed by the prime contractor, extra work shall not interfere with the completion of contract work. An "Extra" crew supervised by the CONTRACTOR shall be used in order to allow the regular crews to perform their scheduled work. **This provision will be strictly enforced.**

3. **CONTRACT SUPERVISION** The CONTRACTOR shall provide a full-time project superintendent for this Agreement who shall possess the necessary skills, knowledge and experience to implement the prime directive and specifications of this contract. The superintendent shall have full jurisdiction over the scheduling of crews and equipment, the acquisition of materials and have authority to provide cost estimates and execute remedial work. The superintendent shall be on-site for the majority of each workday and shall have a mobile phone, fax machine, e-mail and Internet access.

CITYWIDE DRAIN INSPECTION AND CLEANING PROGRAM

EXHIBIT A SCOPE OF WORK

DETAILED SCOPE OF WORK

The work plan shall provide for the systematic inspection and cleaning, if necessary, of all catch basins, curb inlets and/or curb outlet structures within the City of Oceanside rights of way (e.g., streets and City facilities and/or easements as appropriate). More specifically, the program is broken down into two areas, Area one shall have all facilities inspected and cleaned and Area two shall be inspected and cleaned as necessary.

Payment for all work under this program shall include all inspection and cleaning work, traffic control, carrying out work safety and confined entry programs and policies, mobilization and demobilization, overhead and profit, disposal fees, coordination and reporting efforts, any and all other incidental expenses, and other items of work as prescribed below and in these contract documents and no additional compensation shall therefore be allowed.

Area One Inspection and Cleaning:

Area One incorporates all of the Townsite and South Oceanside neighborhoods, and portions of East Side, Capistrano and Loma Alta neighborhoods. Area One includes everything west of I-5, and is bordered by Camp Pendleton on the north, Oceanside Boulevard on the south, and Canyon Drive/San Simeon Street on the east. A graphic depiction of the area is attached to these agreement documents and incorporated by reference. All catch basins, curb inlets and/or curb outlet structures within the City of Oceanside right-of-ways within this area shall be inspected and cleaned by a vactor truck and/or by manual means. Cleaning shall remove any and all trash and debris from the basin, inlet or outlet.

Area Two Inspection and Cleaning As Necessary:

Area Two is defined as the entire City excluding Area One defined above. Within this area all catch basins, curb inlets and/or curb outlet structures within the City of Oceanside rights of ways shall be inspected and cleaned, as necessary. Necessary cleaning is defined as the removal of any and all trash and accumulated solids cumulatively weighing more than one pound.

Inspection Defined: The CONTRACTOR shall visually inspect all catch basins/curb inlets or outlets and complete an inspection sheet, which identifies the location of the particular facility by the City's Storm Drain Index Maps alphanumeric numbering system and by street name and address. The inspection sheet to be utilized is attached to these agreement documents. The CONTRACTOR shall note any structural visible deficiencies and shall note the presence and determine the approximate quantity of all organic or non-

CITYWIDE DRAIN INSPECTION AND CLEANING PROGRAM EXHIBIT A SCOPE OF WORK

organic objects contained, and visible, within the catch basin, curb inlet or curb outlet structure. The method of identifying whether the facility shall be cleaned (e.g., green dot in the basin) shall be in a manner acceptable to the Project Manager.

Cleaning Defined: When organic or non-organic objects are present to warrant cleaning. The CONTRACTOR shall utilize a vactor truck of sufficient size and power to thoroughly clean the catch basin, curb inlet or outlet structure of all accumulated trash and debris. In the event the vactor truck is unable to remove all trash or debris, the CONTRACTOR shall than employ manual methods of removal.

Equipment and Traffic Control:

The CONTRACTOR shall carry out all cleaning operations with a vactor truck of suitable size and power for the work as determined by the Project Manager. All equipment utilized in carrying out the work shall comply with the Standard Specifications for Public Works Construction. Traffic control employed by the CONTRACTOR shall comply with the latest editions of the Standard Specifications for Public Works Construction and/or the California Department of Transportation (CALTRANS) specifications. In general, the vactor equipment shall have a flashing arrow board attached directly to it or the CONTRACTOR shall provide a stand-alone flashing arrow board to trail the vactor truck and provide all traffic control in a safe and efficient manner.

Confined Space Entry Program and Work Safety:

The CONTRACTOR shall be responsible for implementing, administering and maintaining a confined space entry program in accordance with Sections 5156, 5157 and 5157 of Title 8 of the California Code of Regulations. All work shall be carried out in safe and efficient manner and comply with the latest Cal OSHA rules and regulations and work safety as prescribed in the Standard Specifications for Public Works Construction, latest edition.

Coordination and Reporting:

The CONTRACTOR shall coordinate the scheduling of all operations with the City's street maintenance section through the Project Manager. In addition, the CONTRACTOR shall complete and submit all Storm Water Inspection and Cleaning Sheets (copy attached) at the end of each week and shall report any errors and discrepancies in the City's Storm Drain Index Maps, compared to the actual conditions encountered in the field, to the Project Manager.

Oceanside

Neighborhood Planning Areas

May, 2000



North

AREA 2

AREA 1

